

AN ACT

RELATING TO ENERGY CONSERVATION; ENACTING THE ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING ACT; PROVIDING PROCEDURES FOR INSTALLING ENERGY EFFICIENCY MEASURES IN STATE AND SCHOOL DISTRICT BUILDINGS; AUTHORIZING THE ISSUANCE OF ENERGY EFFICIENCY BONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "Energy Efficiency and Renewable Energy Bonding Act".

Section 2. DEFINITIONS.--As used in the Energy Efficiency and Renewable Energy Bonding Act:

A. "authority" means the New Mexico finance authority;

B. "bonds" means energy efficiency bonds;

C. "department" means the energy, minerals and natural resources department;

D. "energy efficiency measure" means a modification or improvement to a building or complex of buildings that is designed to reduce energy consumption or operating costs or that provides a renewable energy source and may include:

(1) insulation of the building structure or systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(3) automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modifications or replacements;

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system;

(6) energy recovery systems;

(7) on-site photovoltaics, solar heating and cooling systems or other renewable energy systems; or

(8) cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

E. "fund" means the energy efficiency and renewable energy bonding fund;

F. "school district" means a political subdivision of the state established for the administration of public schools, segregated geographically for taxation and bonding purposes and governed by the Public School Code;

G. "school district building" means a building, the title to which is held by a school district; and

H. "state building" means a building, the title to which is held by the state or an agency of the state.

Section 3. STATE PLAN FOR ENERGY EFFICIENCY MEASURES.--

A. The department shall develop a state plan for the installation, no later than the end of fiscal year 2010, of energy efficiency measures in state buildings and school district buildings. The plan shall include the maximum amount of on-site renewable energy measures possible while retaining the overall revenue-neutral status of the plan, such that the total cost of the plan is covered entirely by the combined energy cost savings of both the renewable energy and other energy efficiency measures undertaken. In addition, the plan shall include a schedule for funding and installing the energy efficiency measures that gives priority to those projects that will realize significant energy cost savings in the shortest time frame. The department shall develop the plan:

(1) for energy efficiency measures in state buildings in conjunction with the property control division of the general services department, the staff architect of the division, the capitol buildings planning commission and other state agencies with control and management over buildings; and

(2) for energy efficiency measures in school district buildings, in conjunction with the public education

department, the public school capital outlay council and the public school facilities authority.

B. State agencies and school districts shall cooperate with the department in the development and the implementation of the plan.

Section 4. CONTRACTS FOR THE INSTALLATION OF ENERGY EFFICIENCY MEASURES.--Pursuant to the Procurement Code, the department shall install or enter into contracts for the installation of energy efficiency measures at one or more of the state buildings and school district buildings identified in the state plan. The installation or contracts shall address provisions concerning payment schedules, monitoring, inspecting, measuring and warranties as are necessary to ensure that the energy efficiency measures will be installed and the energy cost savings realized in the manner most beneficial to the state; provided that bonds shall not be issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act without a finding by the department that the energy cost savings realized from the energy efficiency measures will be greater than the debt service due on the bonds issued to finance the energy efficiency measures.

Section 5. ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND--PLEDGE OF MONEY IN THE FUND.--

A. The "energy efficiency and renewable energy bonding fund" is created as a special fund within the

authority. The fund shall be administered by the authority as a special account. The fund shall consist of gross receipts tax revenues distributed to the fund by law, money transferred to the fund pursuant to the provisions of the Energy Efficiency and Renewable Energy Bonding Act and other transfers and appropriations made to the fund. Earnings of the fund shall be credited to the fund. Any unexpended or unencumbered balance in the energy efficiency and renewable energy bonding fund shall revert to the general fund at the end of a fiscal year.

B. Money in the fund shall be pledged irrevocably by the authority for the payment of principal and interest on all bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. Money in the fund is appropriated to the authority for the purpose of paying debt service, including redemption premiums, on the bonds and the expenses incurred in the issuance, payment and administration of the bonds.

C. On the last day of January and July of each year, the authority shall estimate the amount needed to make debt service payments on the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act plus the amount that may be needed for any required reserves, administrative expenses or the obligations coming due during the next twelve months from the fund. Amounts that revert to

the general fund from the energy efficiency and renewable energy bonding fund may be appropriated by the legislature to the department for the purposes of carrying out the provisions of the Energy Efficiency and Renewable Energy Bonding Act.

D. Upon payment or defeasance of all principal, interest and other expenses or obligations related to the bonds, the authority shall certify to the public education department, the department of finance and administration and the secretary of taxation and revenue that all obligations for the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act have been discharged and shall direct that distributions cease to the fund pursuant to that act and the Tax Administration Act.

E. The bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act shall be payable solely from the fund or such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. A breach of any contractual obligation incurred pursuant to that act shall not impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the fund

shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the fund is dedicated as provided in this section.

Section 6. CALCULATION OF COST SAVINGS--TRANSFERS TO ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND.--

A. Upon the installation of energy efficiency measures in a state building or school district building, the department shall calculate the estimated energy cost savings, in the form of lower utility payments by the school district or the state, that will be annually realized as a result of the installation of the energy efficiency measures. The department shall certify the estimate to the department of finance and administration and the general services department or other state agency with jurisdiction, in the case of state buildings, and to the department of finance and administration, the public education department and the school district, in the case of school district buildings.

B. In the case of a school district building, when calculating the state equalization guarantee distribution pursuant to Section 22-8-25 NMSA 1978, the public education

department shall deduct ninety percent of the amount certified for the school district by the department.

C. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

D. Prior to June 30 of each year, the total amount deducted for all school districts pursuant to Subsection B of this section shall be transferred to the fund.

E. In the case of a state building, the department of finance and administration shall deduct from the operating budget of the agency responsible for paying the utilities of the state building ninety percent of the amount certified for the agency by the department.

F. Deduction from the operating budget of the agency responsible for paying the utilities of the state building shall cease when the agency's cumulative deductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

G. Prior to June 30 of each year, the total amount deducted for all agencies and all state buildings pursuant to Subsection D of this section shall be transferred from the

appropriate funds to the energy efficiency and renewable energy bonding fund.

Section 7. ENERGY EFFICIENCY BONDS AUTHORIZED--
CONDITIONS--PROCEDURE.--

A. The authority is authorized to issue and sell from time to time revenue bonds, known as "energy efficiency bonds", in an amount outstanding at any one time not to exceed twenty million dollars (\$20,000,000), payable solely from the fund, in compliance with the Energy Efficiency and Renewable Energy Bonding Act and the New Mexico Finance Authority Act for the purpose of installing energy efficiency measures when the department has certified the need for the bonds and the conditions of Subsection C of this section have been satisfied.

B. The net proceeds from the bonds are appropriated to the department for the purpose of making payments for the installation of energy efficiency measures pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

C. Bonds shall not be issued pursuant to this section unless:

(1) the department has committed to install or has entered into one or more contracts pursuant to Section 4 of the Energy Efficiency and Renewable Energy Bonding Act for the installation of energy efficiency measures and the

resulting energy cost savings will be realized within a reasonable time;

(2) considering the timeliness and amount of energy cost savings estimated to be realized from the energy efficiency measures, the department has certified the approximate date when the energy cost savings are most likely to equal or exceed the debt service due on the bonds to be issued to fund the energy efficiency measures;

(3) the life of energy efficiency measures meets or exceeds the life of the bonds allocable to those energy efficiency measures as determined by the department and the authority; and

(4) based on the department's certification, the debt service on the bonds has been structured by the authority to preclude the annual debt service payments due until the date that the cost savings equal or exceed the debt service.

D. Each series of bonds shall be issued pursuant to the provisions of the New Mexico Finance Authority Act, except as otherwise provided in the Energy Efficiency and Renewable Energy Bonding Act.

Section 8. ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--BONDS ARE LEGAL INVESTMENTS.--

A. The Energy Efficiency and Renewable Energy

HB 32
Page 10

Bonding Act and the New Mexico Finance Authority Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of energy efficiency bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

B. Energy efficiency bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

Section 9. BONDS TAX EXEMPT.--All energy efficiency bonds shall be exempt from taxation by the state or any of its political subdivisions.

Section 10. ANNUAL REPORT REQUIRED.--No later than December 1 of each year, the department shall report to the legislature and to the governor on its activities during the previous fiscal year in administering the provisions of the Energy Efficiency and Renewable Energy Bonding Act. The report shall include:

A. details concerning all payments made for the installation of energy efficiency measures;

B. details concerning all expenditures made in administering the provisions of the Energy Efficiency and

Renewable Energy Bonding Act;

C. a list of all buildings in which energy efficiency measures were installed;

D. details showing how the energy cost savings were calculated;

E. an analysis of whether the program has been cost-effective;

F. a report showing progress made in complying with the state plan developed pursuant to Section 3 of the Energy Efficiency and Renewable Energy Bonding Act and, if in noncompliance, a plan for achieving compliance in the future;

G. a summary of activities being conducted during the present fiscal year; and

H. any additional information that will assist the legislature and the governor in evaluating the program.

Section 11. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING FUND--GROSS RECEIPTS TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy efficiency and renewable energy bonding fund from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act in an amount necessary to make the required bond debt service payments pursuant to the Energy Efficiency and Renewable Energy Bonding Act as

determined by the New Mexico finance authority. The distribution shall be made:

A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;

B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and

C. prior to any other distribution of net receipts attributable to the gross receipts tax."

Section 12. Section 22-8-25 NMSA 1978 (being Laws 1981, Chapter 176, Section 5, as amended) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
DEFINITIONS--DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of

products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act. The school district shall budget and expend twenty percent of the total revenue receipts for capital outlay.

C. "Federal revenue", as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978. The school district shall budget and expend twenty percent of the total forest reserve receipts for capital outlay; and

(2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid". The school district shall budget and expend twenty percent of the grant receipts for capital outlay.

D. To determine the amount of the state equalization guarantee distribution, the secretary of public education shall:

(1) calculate the number of program units to which each school district is entitled using an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the state board; or

(3) calculate the number of program units to which a school district with a MEM of two hundred or less is entitled by using an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year, whichever is greater; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(5) calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made

in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;

(7) deduct the total amount of guaranteed energy savings contract payments that the secretary of public education determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

(8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

E. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.

F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6), (7) and (8) of Subsection D of this section.

G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the

previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district to the state general fund."

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.=====